

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 17816 of 2004

Between:

Executive Engineer, TLC Division, Andhra Pradesh Transmission Corporation,
Kadapa

..... PETITIONER

AND

Assistant Provident Fund Commissioner, Sub Regional Office,
1/30, R.S.Road, Kadapa

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or a Writ or direction more particularly one in the nature of Writ of Mandamus restraining the respondent from giving effect to his proceedings No.AP/CP/43238/CDP/ENF.III/2004-05/5934, dated 10-09-2004 and pass such other order or orders as this Honourable court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.S.RAVINDRANATH

Counsel for the Respondent : MR.R.N.REDDY

The Court at the stage of admission made the following :

ORDER:

Heard both sides. At their request, the writ petition itself is taken up for final disposal.

Learned counsel for the petitioner submits that without issuing summons and examining the Contractor, who engaged the employees, the respondent cannot fix up the liability on the principal employer. In view of the law declared by the Apex Court in ***Food Corporation of India V. Provident Fund Commissioner***, which was followed by this Court in W.P.No.24209 of 2003, dated 03-12-2003, the assessment order passed under Section 7A of the Employees Provident Funds & Miscellaneous Provisions Act, 1952 (for short "the Act") is liable to be set aside.

Learned Standing Counsel contends that issuance of notice to the Contractor does not arise, since the employees of the petitioner appeared before the Assistant Provident Fund Commissioner and produced the list of Contractors and wages paid to the employees engaged by them and basing upon the information furnished with regard to the wages, the dues of Provident Fund have been determined. If the petitioner is aggrieved by the assessment made by the respondent, it is open to it to file an appeal before the Tribunal.

In view of the same, the petitioner is permitted to file an appeal before the Appellate Tribunal, within a period of two weeks from today. Since the Appellate Tribunal is not functioning, the writ petition is disposed of, on condition of the petitioner depositing 50% of the amount demanded by the respondent, within a period of two months from the date of receipt of a copy of this order. However, the impugned order shall not be enforced till the disposal of the appeal. On such deposit being made, the Appellate Tribunal without insisting for depositing 75% of the amount for entertaining the appeal, may consider the appeal and dispose of the same in accordance with law. The amount so deposited will be subject to the orders that may be passed in the appeal. No costs.

(A.GOPAL REDDY,J)

Dated:04-10-2004

GJ

To

1 Assistant Provident Fund Commissioner, Sub Regional Office,
1/30, R.S.Road, Kadapa.

2 Two C.D. copies.

3 The Executive Engineer, TLC Division, Andhra Pradesh Transmission
Corporation, Kadapa.